

Notices of Supplemental Proposed Rulemaking

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides that prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office. The Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 411001 et seq.) publication of the Notice of Supplemental Proposed Rulemaking in the *Register* before holding any oral proceedings (A.R.S. § 411022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 4 A.A.R. 1666, July 10, 1998.

2. Sections Affected

Rulemaking Action

R4-21-101	Amend
R4-21-102	Amend
R4-21-103	Amend
R4-21-201	Amend
R4-21-202	Repeal
R4-21-202	Repeal
R4-21-202	Repeal
R4-21-202	Repeal
R4-21-203	Repeal
R4-12-203	New Section
Table 1	New Table
R4-21-204	Repeal
R4-21-204	New Section
R4-21-205	Repeal
R4-21-205	New Section
R4-21-206	New Section
R4-21-207	Repeal
R4-21-207	Repeal
R4-21-208	Repeal
R4-21-208	Repeal
R4-21-209	Repeal
R4-21-209	Repeal
R4-21-301	Repeal
R4-21-302	Repeal
R4-21-303	Repeal
R4-21-304	Repeal
R4-21-305	Repeal
R4-21-306	Repeal
R4-21-306	New Section
R4-21-307	Repeal
R4-21-308	Repeal
R4-21-308	Repeal
Article 4	New Article
R4-21-401	New Section
R4-21-402	New Section
R4-21-403	New Section
R4-21-404	New Section
R4-21-405	New Section
R4-21-406	New Section

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-1704

Notices of Supplemental Proposed Rulemaking

Implementing statute: A.R.S. §§ 32-1722, 32-1723, 32-1724, 32-1725, 32-1726, 32-1727, 32-1728, 32-1729, 32-1773, 41-1003, 41-1062(B), and 41-1072 et seq.

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Ms. Alexis Kjellstrom  
Address: Board of Optometry  
1400 West Washington, Room 230  
Phoenix, Arizona 85007  
Telephone: (602) 542-3095  
Fax: (602) 542-3093

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The current rules regarding the practice of optometry are being amended and expanded to ensure conformity with current optometric statutes and rulewriting standards. The rules are being updated to reflect the statutory amendments enacted in 1993 that expanded the optometric scope of practice. Definitions used in the optometry rules are being clarified and additional definitions are being added. Fees for licensing and biennial license renewal are being raised. In addition, new fees are being added for the registration and biennial registration renewal for nonresident dispensers who wish to fill prescriptions for replacement soft contact lenses. These new fees are presently being promulgated in a rule package that will be before GRRC at its August meeting but are included to reflect the rule, R4-21-103, as it is anticipated to be when this rule package is finalized. Licensing time frames are being established for all licensing activities of the Board as required by A.R.S. § 41-1072 et seq. Application requirements are being clarified and made more specific. The approval of courses of study is being revised and the issuance of topical pharmaceutical agent certificates is being added. The standards of care for conducting eye examinations are being clarified and detailed. A new Article 4 is also being added to prescribe the public participation procedures which are observed by the Board and required by A.R.S. § 41-1003.

6. An explanation of the substantial change which resulted in this supplemental notice:

The initial proposed rule package that this supplement affects was filed with the Office of the Secretary of State for publication on June 18, 1998. On June 19, 1998, GRRC staff provided the Board with the courtesy review for the rules that the Board had been awaiting for some time. Because of the extensive number of changes recommended to the Board both in form and content, it was determined that those regulated by these rules and the public would be best served by revising the rule package substantially in accordance with the GRRC staff recommendations and noticing the revised rules. The hearing and close of record dates established in the Notice of Proposed Rulemaking remain unaffected.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

Cost impacts for the Board will be minimal and include the cost of the rule consultant assisting with this rule promulgation. There is also a remote possibility of additional cost to the Board in the event that it fails to meet the licensing time frames and must refund licensing fees. These rules essentially codify the current Board practices. Cost impacts on currently licensed optometrists, or their employers, as well as applicants for licensure will be affected as both the initial licensure fee as well the biennial licensure renewal fee are being raised from \$150 to \$200, and \$300 to \$400, respectively. The fee increase is necessitated by a projected budget shortfall beginning in fiscal 1999 of \$17,800. Additional revenues to be generated during each two-year budget cycle is expected to be about \$33,000. The result of the fee increase then is to generate additional revenues for the Board, thereby increasing state revenues, to meet this shortfall. It is not anticipated that changes to the continuing education rule provisions will increase costs to licensed optometrists as the number of required hours is not being changed. Benefits of these rules are, for the most part, undefinable in economic terms, as they primarily clarify the practice of optometry in Arizona. However, the single greatest economic benefit of these rules for optometrists and applicants for licensure is the opportunity to practice optometry and derive income from that practice.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Ms. Alexis Kjellstrom  
Address: Board of Optometry  
1400 West Washington, Room 230  
Phoenix, Arizona 85007  
Telephone: (602) 542-3095  
Fax: (602) 542-3093

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how person may request an oral proceeding on the proposed rule:

Date: August 21, 1998  
Time: 3 p.m.

**Notices of Supplemental Proposed Rulemaking**

Location: 1400 West Washington, Room 250  
Phoenix, Arizona

Nature: Public hearing to receive comments on the proposed rule package. The record will remain open until August 28, 1998, at 5 p.m. to receive written comment.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

**12. Incorporations by reference and their location in the rules:**

The following incorporations are made at R4-21-304(A):

1. *Comprehensive Adult Eye and Vision Examination*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
2. *Pediatric Eye and Vision Examination*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
3. *Care of the Patient with Diabetes Mellitus*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
4. *Care of the Patient with Amblyopia*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
5. *Care of the Patient with Primary Angle Closure Glaucoma*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
6. *Care of the Patient with Age-Related Macular Degeneration*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
7. *Care of the Patient with Anterior Uveitis*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
8. *Care of the Adult Patient with Cataract*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
9. *Care of the Patient with Open Angle Glaucoma*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
10. *Care of the Patient with Ocular Surface Disease*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
11. *Care of the Patient with Conjunctivitis*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
12. *Care of the Patient with Strabismus: Esotropia and Exotropia*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881; and
13. *Care of the Patient with Retinal Detachment and Related Peripheral Vitreoretinal Disease*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881.

**13. The full text of the changes follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 21. BOARD OF OPTOMETRY**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R4-21-101. Definitions  
R4-21-102. Meetings  
R4-21-103. Fees

**ARTICLE 2. LICENSING PROVISIONS**

- R4-21-201. Licensure Application for license  
R4-21-202. Educational qualifications for licensure  
R4-21-204 R4-21-202. License Examination examination  
R4-21-203. Course of study in clinical pharmacology  
R4-21-203. Time Frames for Licensure. Renewal of License. TPA Certification, and Approval of Course of Study  
R4-21-204. Renewal of License  
R4-21-205. Board-Approved Course of Study

R4-21-206. Issuance of TPA Certificate

R4-21-205 R4-21-207. Submission of fee Notice of grades; issuance and display of license; surrender of license

R4-21-207 R4-21-208. Continuing Education Requirements; Program Criteria and Procedures education requirements; program criteria and procedures

R4-21-208 R4-21-209. Discretionary Exemption exemption

**ARTICLE 3. REGULATORY PROVISIONS**

- R4-21-301. Styles of Optometric Practice: Staff Responsibility optometric practice  
R4-21-302. False Advertising advertising  
R4-21-303. Affirmative Disclosures in Advertising and Practice: Warranties, Service, or Ophthalmic Goods Replacements Agreements disclosures in advertising and practice

**Notices of Supplemental Proposed Rulemaking**

- R4-21-304. Vision Examination Standards: Records Minimum vision examination standards; records
- R4-21-305. Prescription Standards: Release to Patients Minimum prescription standards; release to patients
- R4-21-306. Low Vision Rehabilitation and Vision Therapy
- R4-21-307. Subpoenas
- R4-21-308. Rehearing or Review of Administrative Decision review of administrative decision

**ARTICLE 4. PUBLIC PARTICIPATION PROCEDURES**

- R4-19-401. Agency Record: Directory of Substantive Policy Statements
- R4-19-402. Petition for Rulemaking: Review of Agency Practice or Substantive Policy Statement: Objection to Rule Based Upon Economic, Small Business or Consumer Impact
- R4-19-403. Public Comments
- R4-19-404. Oral Proceedings
- R4-19-405. Petition for Delayed Effective Date
- R4-19-406. Written Criticism of Rule

**ARTICLE 1. GENERAL PROVISIONS**

R4-21-101. Definitions  
In this Chapter, unless the context otherwise specified requires, the following definitions of terms mean shall apply:

- 1. "Approved course of study in clinical pharmacology" means a course or group of courses which contain the subjects described in R4-21-203.
- 1. "Accredited" means that an educational institution is accredited by the New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, or the American Optometric Association Council on Optometric Education.
- 2. "Application" means forms designated as applications and all documents and additional information the Board requires to be submitted with an application.
- 23. "Board" means the Arizona State Board of Optometry.
- 34. "Incompetence" means:
  - a. The lack of professional skill or fidelity in performing the practice of optometry;
  - b. Treatment in a manner contrary to accepted optometric practices;
  - c. Lack of physical or mental fitness to discharge professional duties.
- 5. "Licensure by examination" means the applicant has met the examination requirements of A.R.S. § 32-1724.
- 6. "Licensure by reciprocity" means satisfying all of the requirements of A.R.S. § 32-1723.
- 7. "Low vision rehabilitation" means evaluation, diagnosis, management, and treatment, including the prescribing of corrective spectacles, contact lenses, prisms or filters; or the employment of any means for the adaptation of lenses.
- 8. "National Board" means the National Board of Examiners in Optometry.
- 9. "National Board exam" means the optometry examination administered by the National Board. The Board may approve portions of the National Board exam for purposes of licensure.
- 10. "Topical pharmaceutical agents" or "TPA" means all externally-applied medications used to diagnose, treat, and manage diseases of the eye and its adnexa.

- 11. "TPA certificate holder" means an optometrist who has met the requirements of A.R.S. §§ 32-1722(A)(3) and 32-1728.
- 12. "Vision therapy" means an individualized treatment program prescribed to improve or rehabilitate conditions such as strabismus or amblyopia and to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the 2 eyes. It may include prescribing of corrective spectacles, contact lenses, prisms or filters, or the employment of any means for the adaptation of lenses.

**R4-21-102. Meetings**

The Board shall conduct meetings will be held at least 6 six times each year at such times and places as the Board or the Governor may designate.

**R4-21-103. Fees**

- A. In addition to fees established by A.R.S. § 32-1727, the the Board shall charge license fees as follows fees relating to licenses are:
  - 1. License issuance fee: ~~\$200~~\$150.00 in even-numbered years and ~~\$400~~\$300.00 in odd-numbered years.
  - 2. Biennial license renewal fee: ~~\$400~~\$300.00.
- B. A person requesting public records shall pay The Board will charge the following fees for searches and copies of Board its records under made pursuant to A.R.S. §§ 39-121.01 or 39-121.03:
  - 1. Noncommercial copy:
    - a. 5¢ per name and address for directory listings or 15¢ each if printed on labels,
    - b. 25¢ per page for other records;
  - 2. Commercial copy:
    - a. 25¢ per name and address for directory listings or 35¢ each if printed on labels,
    - b. 50¢ per page for other records;
  - 3. Record searches: \$25.00 per hour, after first 15 minutes, with a minimum charge of \$10 (this fee shall be waived for other government agencies); and
  - ~~C-4.~~ Pamphlets containing optometry statutes and rules: \$5.00.
- C. An applicant for registration or biennial registration renewal as a nonresident dispenser shall pay to the Board a fee in the amount of \$500.

**ARTICLE 2. LICENSING PROVISIONS**

**R4-21-201. Licensure Application for licensure**

- A. Application must be made on forms obtained from the Board. There are two types of applications: application for license by examination and application for license by reciprocity.
  - 1. Application for license by examination must be filed at least 30 days prior to the date of the licensing examination.
  - 2. Application for license by reciprocity must be filed at least 60 days prior to the date of the licensing examination.
- A. An applicant for licensure by examination shall submit to the Board all of the following information on a form provided by the Board not later than 30 days prior to the date of the licensing examination:
  - 1. The applicant's full name.
  - 2. The applicant's place and date of birth.
  - 3. The applicant's current residence;
  - 4. The applicant's residence addresses for the past 10 years;
  - 5. The applicant's educational background;
  - 6. The applicant's previous optometric experience;

**Notices of Supplemental Proposed Rulemaking**

7. The applicant's previous optical experience;
  8. The applicant's work experience or occupation for the past 10 years;
  9. A list of the applicant's previous state board examinations;
  10. A list of the states in which applicant is or has been licensed and, if no longer valid, the reasons why;
  11. Whether the applicant has ever been denied the right to take an examination for optometric licensure by any state;
  12. Whether the applicant has ever been refused an optometric license or renewal in any state;
  13. Whether the applicant has ever had a license or certificate of registration to practice optometry suspended or revoked by any optometric licensing agency, board or equivalent;
  14. Whether any disciplinary action has ever been instituted against the applicant by any optometric licensing agency or equivalent, including any to determine whether the applicant's license to practice optometry should be suspended or revoked;
  15. Whether the applicant has ever been arrested for, pled guilty to, or been convicted of a felony or misdemeanor offense;
  16. Whether the applicant has been addicted to narcotic substances or habitually abused alcohol within the last 10 years;
  17. Whether the applicant is presently addicted to narcotic substances or habitually abuses alcohol;
  18. If the answer to any of the questions in paragraphs 11 through 17 is affirmative, a complete explanation of the details, including dates;
  19. The signed endorsements of 3 professional or business persons, unrelated to the applicant, who have known the applicant for at least the past 3 years;
  20. A sworn statement under oath by the applicant verifying the truthfulness of the information provided by the applicant; and
  21. A photograph of the applicant showing head and shoulders and measuring 2 inches by 3 inches.
- B.** In addition to the requirements of subsection (A), an applicant for licensure by examination shall submit or arrange to have submitted. An application will be considered complete when it includes:
1. Completed application form;
  21. A completed Completed fingerprint card accompanied by a separate nonrefundable fee in the form of a cashier's check, certified check, or money order in an amount determined by and payable to the Arizona Department of Public Safety for the procurement of background information.
  32. The filing Filing fee pursuant to A.R.S. § 32-1727.
  43. Evidence of the successful completion of an approved course of study in clinical pharmacology prescribed by A.R.S. § 32-1722(A)(3) to include the following:
    - a. An official transcript showing that the applicant has passed the course or courses, if the applicant graduated from a school of optometry on or after April 6, 1993, or
    - b. A certificate of completion issued by the sponsoring institution specifying the subject matter and hours completed, if the applicant graduated from a school of optometry prior to April 6, 1993.
  54. An official transcript directly from the accredited institution from which the applicant graduated with a degree in optometry. A copy of all optometry college transcripts as specified by R4-21-202. The transcript transcripts need

not be filed with the application, but shall must be filed with the Board at least 10 ten days prior to the examination date.

- 6C.** An applicant for licensure by reciprocity shall submit to the Board all of the information required by subsections (A) and (B) not later than 60 days prior to the date of the licensing examination together with if for licensure by reciprocity, the following additional materials:

- a1. Completion of the A State Certification form provided by the Board completed by the agency responsible for licensing optometrists in the state from which the applicant is seeking reciprocity, that provides the following information The form, when completed, must:
    - ia. Confirmation Confirm that the state accords similar reciprocity privileges to optometrists licensed in Arizona;
    - ib. Confirmation Confirm that the applicant has been engaged in the practice of optometry in or under the authority of that state for at least 4 four of the 5 five years preceding the date of the this application;
    - iiic. Explanation of State the basis for and result of any disciplinary action taken against the applicant within the preceding 10 ten years, including censure, probation, suspension, or revocation of the applicant's license;
    - ivd. Description of Describe any pending investigations or complaints regarding the applicant;
    - ve. Statement State that the applicant is in good standing to practice optometry in that state; and
    - vif. Statement State whether the applicant is known to have been licensed to practice optometry in any other state and, if so, the name(s) of that state; and
    - vii. State whether the applicant is authorized to use diagnostic pharmaceuticals.
  - b2. The applicant's sworn and notarized statement on a form provided by the Board that affirms to the effect that the applicant satisfies each of the requirements of A.R.S. § 32-1723(A)(3), (4), and (6).
- 6D.** The Board shall permit only those applicants Applicants who fail to complete an the application or to file the transcripts prior to the deadlines may not to take an the examination.
- D.** If an applicant for licensure by examination has been notified of his eligibility to take an examination but is unable to do so because of a verifiable emergency, he may take the next following examination upon submitting a new application but need not pay an additional examination fee.

**R4-21-202. Educational qualifications for licensure**

An applicant shall submit to the Board official transcripts as evidence of graduation with a degree in optometry from a university or college which was accredited at the time of graduation. The Board will recognize as accredited those institutions that have been accredited by the American Optometric Association Council on Optometric Education on the date this Section was last amended. Institutions accredited by the American Optometric Association Council on Optometric Education after the date this Section was last amended may also be approved by the Board upon a majority vote of its members. In addition, the Board may approve institutions accredited by other nationally accepted accrediting bodies, provided that the standards for accreditation are equivalent to those of the American Optometric Association Council on Optometric Education.

**R4-21-204R4-21-202. License Examination examination**

- A.** An applicant for licensure shall take a written and practical The licensing examination will include a written examination

**Notices of Supplemental Proposed Rulemaking**

on subjects currently taught in accredited schools of optometry.

- a1. No later than the 1st first Board meeting of a calendar year, the Board shall ~~will~~ determine ~~announce~~ for that calendar year that the Board shall either:
  - a. Under pursuant to A.R.S. § 32-1724, whether to administer a offer an Arizona written examination to applicants, or and, if so, whether to
  - b. Accept ~~accept~~ in lieu thereof, documentation that an applicant has passed Board-designated parts of the written examination administered by the of passing the National Board and designate the parts of the exam that must be passed of Examiners in Optometry examination.
- b2. While a written examination is in progress, an examinee shall not leave the room nor communicate with any person other than a proctor of the Board without the proctor's permission. The time allotted to complete each subject of the examination will be indicated by written instructions. Each The Board shall grade each written examination subject will be graded separately, and calculate an overall average of the subjects will be calculated from the individual scores separately from independently of any practical exam score scores. All written questions remain the property of the Board and applicants shall return them must be returned to the Board at the end of the examination.
23. An applicant All applicants for licensure shall complete a the practical examination. The practical examination may include clinical procedures and The practical examination will require written responses to questions about on slides of eye conditions and an examination on clinical procedures. The Board may require an applicant to examine which may include an examination of a patient as part of the practical examination. An applicant Examinees shall supply any hand-held instruments or equipment needed for use in the clinical practice examination.
- 4B. An applicant who fails either the written or practical portion of the examination and applies for re-examination in a subsequent year shall retake the entire examination given in the re-examination year. An applicant for Any re-examination shall pay the regular will require payment of a full examination fee.
- C. An applicant who fails the licensing examination may appeal the Board's exam score determinations as follows:
  1. Within 60 days of license denial, the applicant or the applicant's attorney may make an appointment to examine the applicant's most recent examination answers in the Board's office during regular business hours for a total time of 2 hours. The applicant may take notes and shall provide a copy of such notes to the Board to retain and review to protect the integrity of the examination. Dissemination of confidential testing material is grounds for license denial.
  2. An applicant shall file an original and 7 copies of a petition for review within 60 days after the examination scores are mailed by the Board. The applicant shall type or print the petition that shall contain:
    - a. A specific statement of grading errors.
    - b. Supporting evidence, and
    - c. The signature of the applicant or the applicant's attorney.
  3. If the Board affirms the original test score, the applicant may request a hearing on the license denial pursuant to the provisions of A.R.S. Title 41, Chapter 6, Articles 6 and 10.

**R4-21-203. Course of study in clinical pharmacology**

- A. An applicant for licensure shall submit proof of satisfactory completion of a course of study in clinical pharmacology having a particular emphasis on the clinical application of diagnostic pharmaceutical agents for the purpose of examination of the human eye and analysis of ocular functions. This requirement shall also apply to optometrists licensed in Arizona prior to January 1, 1982, if such optometrists wish to utilize diagnostic pharmaceutical agents in the practice of optometry. Licensed optometrists who do not satisfactorily complete an approved course of study in clinical pharmacology shall not utilize diagnostic pharmaceutical agents.
- B. The course of study in clinical pharmacology must meet the following criteria:
  1. The course shall contain a minimum of 40 clock hours of instruction.
  2. The course of study must contain the following topics:
    - a. Basic principles of pharmacology—minimum of six hours: factors governing drug disposition (including drug absorption, distribution, metabolism, and excretion); pharmacokinetic variables of drug action; mechanisms of drug action (including actions at receptors, dose-response relationships, and graded drug responses); and mechanisms of chemical toxicity.
    - b. Anatomy, physiology, and pharmacology of the autonomic nervous system—minimum of six hours: anatomical organization of the autonomic nervous system; neurotransmission processes; recognized neurotransmitter substances in the autonomic nervous system and their receptors; and physiological responses to receptor activation or blockade.
    - c. Autonomic control of iris and ciliary smooth muscle—minimum of one hour: light reflex and physiological responses to drugs which activate or block cholinergic and adrenergic receptors in the eye.
    - d. Mechanisms of local anesthesia—minimum of two hours: physiology of nerve conduction; mechanisms of action of topical anesthetics; and pharmacological and toxicological consequences of local anesthesia.
    - e. Basic pharmacology of cycloplegics, mydriatics, and topical anesthetics—minimum of two hours: disposition, pharmacokinetics, pharmacological actions, side effects, and contraindications for use of these agents.
    - f. Prescription drugs, over the counter drugs, and other remedies which may affect ocular function—minimum of two hours: drugs prescribed for local or systemic diseases; over the counter systemic drugs and other remedies; and effects of self-medication with topical agents.
    - g. Beneficial and adverse drug interactions—minimum of two hours: mechanisms of beneficial and adverse interactions; and specific interactions of cycloplegics, mydriatics, and local anesthetic drugs.
    - h. Systemic reactions to topically applied drugs—minimum of one hour.
    - i. Diagnosis of specific diseases of the fundus of the eye and angle closure glaucoma, and the effect of topical drugs on these diseases—minimum of two hours: angle closure glaucoma; corneal abrasions; and uveitis.
    - j. Hazards of misuse of topical drugs—minimum of one hour.



**Notices of Supplemental Proposed Rulemaking**

- k. ~~Ocular diseases or conditions requiring referral to physicians—minimum of one hour; diagnosis of specific diseases or conditions requiring referral.~~
- 3. ~~Faculty for the course must include instructors with expertise in basic pharmacology and clinical pharmacology as applied to the examination of the human eye.~~
- C. ~~The Board will not approve a course of study in clinical pharmacology unless the faculty of such course conditions passing the course on the successful completion of an examination for competency in clinical pharmacology. The faculty of a course of study in clinical pharmacology shall prepare, conduct, and grade the examination.~~
- D. ~~The Board will review the course of study submitted by applicants for licensure or optometrists licensed prior to January 1, 1982, and will determine whether such course meets the criteria for an approvable course of study in clinical pharmacology. Persons planning to enroll in a course of study in clinical pharmacology for the purposes of A.R.S. § 32-1722 or 32-1723 may submit to the Board for review prior to enrollment an outline of the course or courses, name of the sponsoring institution, and names and qualifications of faculty or instructors.~~
- E. ~~A person will be deemed to have satisfactorily completed a course of study when he submits to the Board:~~
  - 1. ~~An outline of the course or courses, and names and qualifications of instructors if these were not submitted to the Board prior to enrollment.~~
  - 2. ~~An official transcript showing that he has passed the course or courses.~~
  - 3. ~~A certificate of completion issued by the sponsoring institution specifying the subject matter and hours completed.~~
- F. ~~Optometrists licensed before January 1, 1982 who have satisfactorily completed a course of study in clinical pharmacology since January 1, 1977 will be issued a diagnostic pharmaceutical agent certificate.~~

**R4-21-203. Time-Frames for Licensure, Renewal of License, TPA Certification, and Approval of Course of Study**

- A. For each type of license, renewal of license, certificate, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.
- B. For each type of license, renewal of license, certificate, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins on the date the Board receives an application.
  - 1. If the application is not administratively complete, the Board shall send a deficiency notice to an applicant.
    - a. The deficiency notice shall state each deficiency and the information needed to complete the application and documents.
    - b. Within the time provided in Table 1 for response to the deficiency notice, beginning on the mailing date of the deficiency notice, the applicant shall submit the missing information specified in the deficiency notice to the Board. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information.
  - 2. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
  - 3. If the application does not contain all of the components required by statute or this Chapter, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

- C. For each type of license, renewal of license, certificate, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date as prescribed in subsection (D), depending on the manner in which the Board transmits the written notice of administrative completeness to the applicant.

- 1. During the substantive review time-frame, the Board may make 1 comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information, the applicant shall submit to the Board the requested additional information. The time-frame for the Board to finish the substantive review is suspended from the date calculated as prescribed in subsection (D), depending on the manner in which the Board transmits the comprehensive written request for additional information to the applicant, until the Board receives the requested additional information.
- 2. Under A.R.S. § 32-1722(C), the Board may notice a hearing for purposes of obtaining information for the purpose of investigating the character of any applicant for licensing and any aspect of the application. The time-frame to finish the substantive review is suspended from the date the Board notices the hearing.
- 3. The Board shall issue a written notice of license, renewal of license, certificate, or approval if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter.
- 4. The Board shall issue a written notice informing the applicant that the Board considers the application withdrawn if the applicant does not submit the requested additional information within the time-frame in Table 1.
- 5. If the applicant meets all of the substantive criteria required by statute and this Chapter for licensure, renewal of license, certificate, or approval, the Board shall issue the license, renewal of license, certificate, or approval to the applicant. The Board shall issue a topical pharmaceutical agent certificate with a license to practice optometry.

- D. In computing any period of time prescribed in this Section, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a state holiday. The computation shall include intermediate Saturdays, Sundays, and holidays. The time period shall commence on the date of personal service, date shown as received on a certified mail receipt, or postmark date.

**R4-21-204. Renewal of License**

- A. An applicant for license renewal shall submit all of the following information to the Board on a form provided by the Board prior to August 31 of the year the license expires:
  - 1. Changes in the applicant's mailing address.
  - 2. List of all practice addresses and phone numbers.
  - 3. Information regarding completion of the required continuing education.
  - 4. State where the applicant currently practices and date when practice commenced.
  - 5. Whether the applicant is retired from the practice of optometry.
  - 6. Whether the applicant declines renewal of license.
  - 7. Whether the applicant has been arrested or convicted of any misdemeanor or felony during the renewal period.

*Arizona Administrative Register*  
**Notices of Supplemental Proposed Rulemaking**

8. Sworn statement under oath signed by the applicant verifying the truthfulness of the information provided by the applicant and

9. Renewal fee;

**B.** A license is void under A.R.S. § 32-1726(A) if an applicant does not submit a renewal application and renewal fee before August 31 of the year the license expires.

**R4-21-205. Board-Approved Course of Study**

**A.** An institution that provides a course of study in didactic education, pharmacology and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexa for purposes of A.R.S. § 32-1722(A)(3) shall be a college of optometry that is accredited by the American Optometric Association Council on Optometric Education.

**B.** A college of optometry shall apply to the Board for approval for a course of study as prescribed by A.R.S. § 32-1722(A)(3). The initial application for approval shall include the following information:

1. Applicant's name and address;
2. Certification that the course is equivalent to courses provided to new graduates of the college;
3. Number and qualifications of proposed faculty and staff; and
4. Course outline that shall include:
  - a. Diagnosis and treatment of anterior segment disease;
  - b. Diagnosis and treatment of posterior segment disease;
  - c. Diagnosis and treatment of glaucoma; and
  - d. Diagnosis and treatment of systemic diseases and emergencies.

5. Evidence of accreditation by the American Optometric Association Council on Optometric Education.

**C.** A college of optometry that offers a course of study for purposes of A.R.S. § 32-1722(A)(3) shall grant a certificate of completion or its equivalent for the course when a student passes written examination administered by the faculty. The written examination shall not be a take-home test.

**R4-21-206. Issuance of TPA Certificate**

**A.** An optometrist licensed before July 17, 1993, who wishes to administer, dispense, and prescribe topical pharmaceutical agents in practice shall submit a written request to the Board and shall cause to be submitted to the Board evidence that:

1. The optometrist has satisfactorily completed a Board-approved course of study required by A.R.S. § 32-1722(A)(3);
2. The course of study meets the criteria listed in R4-21-205; and
3. The optometrist has successfully passed the National Board examination approved by the Board after July 17, 1993.

**B.** The Board shall determine that an optometrist has satisfactorily completed a Board-approved course of study when the optometrist causes the following to be submitted to the Board:

1. An official transcript mailed to the Board by the issuing institution showing that the optometrist has passed the course; and
2. A certificate of completion from the issuing institution specifying the subject matter and hours completed.

**C.** An optometrist licensed prior to July 17, 1993, who is planning to enroll in a course of study in clinical pharmacology for the purposes of A.R.S. § 32-1722 or 32-1723 shall submit to the Board for review and approval, prior to enrollment, an outline of the course or courses, name of the sponsoring institution, names and qualifications of faculty or instructors, and evidence that the course of study meets the criteria for an

approvable course of study in R4-21-205. A request for approval of a course shall be submitted to the Board not less than 60 days prior to the date the course is offered. The timeframes for the granting of a course approval are those in R4-21-203.

**D.** The Board shall issue a certificate to an optometrist licensed since July 17, 1993, and an optometrist who meets the requirements of this Section that evidences that the optometrist is authorized to administer, dispense, and prescribe all topical pharmaceutical agents for the purpose of examining the eye and adnexa, and the diagnosis, treatment, and management of eye conditions.

**E.** An optometrist who is denied certification in accordance with this Section or whose course of study is not approved by the Board may appeal the decision by filing a written request with the Board within 15 days following receipt of the notice from the Board of denial of certification or disapproval. The hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6.

**R4-21-205R4-21-207. Submission of fee; Notice of grades; issuance and display of license; surrender of license**

**A.** ~~After the applicants have been notified by mail of their examination results, applicants may inspect their examination answers during the regular office hours of the Board.~~

**BA.** An applicant shall submit to the Board the license issuance fee under A.R.S. § 32-1727 within 60 days following notification by the Board that an applicant has met the qualifications for licensure, the applicant shall submit to the Board the license issuance fee pursuant to A.R.S. § 32-1727. The Board shall will issue a license within 60 days following receipt of payment.

**BC.** An optometrist shall conspicuously display an The optometry license or a Board-issued duplicate shall be conspicuously displayed at all places where the optometrist is registered to practice optometry. In addition, each optometrist authorized to use diagnostic pharmaceutical agents or to administer, dispense, and prescribe all topical pharmaceutical agents shall similarly display the appropriate diagnostic pharmaceutical agent certificate or a Board-issued duplicate. An optometrist shall surrender to the Board all licenses, certificates, and duplicates upon disciplinary order of the Board.

**R4-21-207R4-21-208. Continuing Education Requirements; Program Criteria and Procedures**  
~~education requirements; program criteria and procedures~~

**A.** An optometrist applying Each application for biennial license renewal shall include with the application be accompanied by a list of courses and a notarized affirmation by the licensee of attendance at 32 clock hours of Board-approved courses and programs in continuing education. An optometrist who makes a Any materially false statement in the this affirmation shall will be subject to grounds for disciplinary action, including suspension or revocation of license.

**B.** Continuing education courses approved by the board for renewal of a license to practice optometry are:

1. Educational courses offered at the American Optometric Association Convention or offered at any American Optometric Association affiliate state association convention;
2. Seminars held by committees of the American Optometric Association or organized regional Optometric Extension Program Foundation seminars for educational purposes;
3. Postgraduate courses offered by accredited schools or colleges of optometry;



**Notices of Supplemental Proposed Rulemaking**

4. Postgraduate correspondence courses offered by an accredited college of optometry, provided that no more than 6 hours of continuing education credits are claimed in a single licensing renewal period; and
5. Other continuing education courses or programs that are based upon the following:
  - Ba.** The program shall must have optometric application and shall must be available to all optometrists. All program instructors shall must have expertise in the field in which they are instruct instructing.
  - Cb.** An optometrist applying for license renewal shall submit to the Board for approval 45 days prior to the date the course is offered A description of the program content, instructors, and their qualifications, the sponsor of the program, if any, the conditions of availability, and the time and place offered must be submitted to the Board for approval 45 days prior to the date the course is offered:
    - i. Learning objectives shall be reasonably and clearly stated;
    - ii. Teaching methods shall be clearly stated and appropriate;
    - iii. Attendance shall be open to all optometrists and students of optometry; and
    - iv. Documentation of attendance must be provided to those attending.

- DC.** The Board shall limit continuing education credit for correspondence type courses, including computer, on-line education courses, to no No more than 8 six hours of continuing education credit shall be in correspondence type courses; The Board shall limit continuing education credit for practice management or administration to no No more than 4 four hours of continuing education credit shall be in practice management or administration.
- ED.** An optometrist shall not carry-over hours Hours accumulated in any 1 one biennial license period shall not be carried forward to a subsequent license period.
- FE.** An optometrist shall must submit evidence of his approved hours of continuing education hours with the optometrist's his biennial license renewal.

**R4-21-208R4-21-209. Discretionary Exemption exemption**

- A.** In emergency situations or circumstances involving extreme hardship to an optometrist, the Board may, at its discretion and may, for good cause shown, reduce the number amount of hours of continuing education required or grant an extension of time for completion of all or part of the continuing education requirement for a particular biennial licensure period.
- B.** At least 90 days prior to the date of license renewal, a licensee who desires a reduction or extension to complete continuing education shall submit documentation to the Board of the emergency situation or circumstances involving extreme hardship that prevent the licensee from complying with the continuing education requirement in R4-21-208.

Table 1. Time-frames (in days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Initial Licensure by Examination or Reciprocity R4-21-201	90	30	10	60	10
Renewal of License R4-21-204	90	60	10	30	10
Board-Approved Course of Study R4-21-205	180	90	15	90	15
Issuance of TPA Certificate R4-21-206	120	60	10	60	15
Continuing Education Program Approval R4-21-208	120	60	10	60	10
Registration of nonresident dispenser of replacement soft contact lenses A.R.S. § 32-1773	120	60	10	60	10

**ARTICLE 3. REGULATORY PROVISIONS**

**R4-21-301. Styles of Optometric Practice: Staff Responsibility optometric practice**

- A.** An optometrist shall may practice the profession of optometry only as a sole practitioner, as a partner with other optometrists, a professional corporation, or as an employee of an optometrist or an optometric professional corporation. In any of these styles of practice, an optometrist may practice an as an inde-

pendent contractor and shall may practice only under the name, which may include a trade name, by which the optometrist is registered with the Board.

- B.** An optometrist who practices the profession of optometry as an independent contractor shall:
  1. Be solely responsible for patient examination, diagnosis and treatment; and for the procedures used for scheduling and recordkeeping; and,

Notices of Supplemental Proposed Rulemaking

2. Conduct the practice of optometry free of any control by a person not licensed to practice the profession of optometry.

C. An optometrist shall ensure that the optometrist's staff complies with the requirements of the laws and rules of Arizona that govern the practice of optometry.

**R4-21-302. False Advertising advertising**

- A. An optometrist shall not make, publish, or use an advertisement, printed, oral, or otherwise, that contains any false, fraudulent, deceptive, or misleading representations concerning ophthalmic goods or optometric services, or the manner of their sale or distribution.
- B. An optometrist shall only not advertise as a specialist if the optometrist when the optometrist unless he has been certified by the American Academy of Optometry as a diplomate in that specialty or as a fellow in the College of Optometrists in Vision Development. An Any optometrist may advertise that the optometrist has a practice limited he limits his practice in some way, provided that the optometrist shall not use the term "specialist" or any derivative of that term is not used.
- C. The Board considers an An optometrist whose name and address appears in an any advertisement or directory is deemed to have knowledge of the contents of the that advertisement or directory.

**R4-21-303. Affirmative Disclosures in Advertising and Practice; Warranties, Service, or Ophthalmic Goods Replacement Agreements disclosures in advertising and practice**

- A. An Any advertisement for or by an optometrist offering ophthalmic goods or optometric services for a stated price or discount shall clearly indicate in the spoken word or in type size equivalent to the address line within in the context of the advertisement:
  1. If for spectacle lenses or contact lenses are offered, whether they are single vision, multifocal, or other;
  2. Whether the price includes the frame and lenses for spectacles;
  3. Whether the price includes an eye examination;
  4. Whether the price for contact lenses includes all dispensing fees, follow-up care, or a contact lens accessory kit, and, if an accessory kit is included, the specific features of the kit;
  5. Whether any restrictions are imposed upon delivery, if delivery time is advertised;
  6. The applicable Applicable refund policy if refunds are advertised; and
  7. If applicable, a statement that other restrictions apply.
- B. An optometrist who prescribes treatment for a patient shall inform a the patient of the optometrist's his fee policy prior to providing such treatment.
- C. An optometrist who refers a patient to a facility in which the optometrist or a member of his family has an ownership or employment interest shall advise make that fact known to the patient at the time of the referral.
- D. An optometrist who charges a patient a fee for a warranty, or a service or ophthalmic goods replacement agreement, shall give the patient a written copy of the warranty, or service or ophthalmic goods replacement agreement, that explains the coverage and any limitations. An optometrist shall document the transaction by making a written entry on the patient's records, or by placing a copy of the warranty, or service or ophthalmic goods replacement agreement, in the patient's records.

**R4-21-304. Vision Examination Standards: Records Mini-**

**imum vision examination standards; records**

A. ~~The minimum standards for a professional eye examination are:~~

1. Complete case history;
2. Visual acuity of each eye: entering, uncorrected, and with best correction;
3. Ocular health examination;
4. Assessment of intraocular and extraocular muscle function;
5. Objective or subjective refraction of the eyes;
6. Diagnosis, treatment and disposition.

A. An optometrist shall conduct eye examinations in accordance with the standards of care established by the following American Optometric Association practice guidelines which are incorporated herein by reference and on file with the Secretary of State, and no later editions:

1. Comprehensive Adult Eye and Vision Examination, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
2. Pediatric Eye and Vision Examination, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
3. Care of the Patient with Diabetes Mellitus, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
4. Care of the Patient with Amblyopia, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
5. Care of the Patient with Primary Angle Closure Glaucoma, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
6. Care of the Patient with Age-Related Macular Degeneration, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
7. Care of the Patient with Anterior Uveitis, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
8. Care of the Adult Patient with Cataract, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
9. Care of the Patient with Open Angle Glaucoma, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
10. Care of the Patient with Ocular Surface Disease, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
11. Care of the Patient with Conjunctivitis, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
12. Care of the Patient with Strabismus: Esotropia and Exotropia, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881; and
13. Care of the Patient with Retinal Detachment and Related Peripheral Vitreoretinal Disease, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881.

B. An optometrist shall establish and maintain a complete and legible record of each examination including all findings. The Board shall consider an illegible record to be an incomplete examination. An optometrist shall assure that a The patient record reflects record shall reflect the name of the person who makes each entry and is shall be maintained by the optometrist for at least 5 five years after the last contact with a the patient. The patient record shall include:

1. Complete case history;
2. Visual acuity of each eye: entering, and best corrected;

*Arizona Administrative Register*  
**Notices of Supplemental Proposed Rulemaking**

3. Ocular health examination;
  4. Assessment of intraocular and extraocular muscle function;
  5. Objective or subjective refraction of the eyes;
  6. Diagnosis, treatment, and disposition;
  7. The items required by subsection (A);
  27. The type and dosage of each use of a diagnostic pharmaceutical agent;
  38. Any final prescription given; and
  49. Any program of corrective procedure program prescribed.
- C. An optometrist who discontinues practice for any reason shall arrange for patient records to be available to a patient the patients for 5 five years and shall notify the Board of the permanent location of patient records from that practice prior to discontinuing the practice being discontinued. An optometrist who acquires or succeeds to a the practice or patient records of an another optometrist who has discontinued practice shall maintain the records or make arrangements for the records to be available to a patient the patients for 5 five years after the practice was discontinued.
- D. An optometrist shall, upon written request of a patient, transmit a copy of any or all of the patient's requested records to any designated person. The optometrist may charge a A fee may be charged to cover clerical and mailing costs, and The optometrist shall maintain a record shall be maintained of the transfer for 5 five years from the date of the transfer.

**R4-21-305. Prescription Standards; Release to Patients Minimum prescription standards; release to patients**

- A. An optometrist shall not charge a the patient a any fee in addition to the examination fee as a condition for release of the patient's prescription. An The requirements for optometric prescription shall include prescriptions are:
1. For ophthalmic lenses other than contact lenses:
    - a. The refractive power of the lenses;
    - b. The inter-pupillary distance;
    - c. The printed name of the optometrist, the location of the office, and the signature of the optometrist; and
    - d. The date of the examination.
  2. For contact lenses:
    - a. If a patient who has not completed a trial period appropriate under the circumstances desires to have a prescription, the prescription need only contain the information required for ophthalmic lenses other than contact lenses;
    - b. If a patient has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to accurately reproduce the contact final lenses;
    - c. The printed name of the optometrist, the location of the office and the signature of the optometrist;
    - d. The date of the examination, and the expiration date of the prescription and the number of lenses that can be dispensed prior to the expiration date.
  3. For topical pharmaceutical agents:
    - a. The date of issuance;
    - b. The name and address of the patient;
    - c. The name, strength, and quantity;
    - d. The directions for use;
    - e. The name and address of the prescribing optometrist;
    - f. The written signature of the prescribing optometrist;
    - g. The topical pharmaceutical agent certificate number of the prescribing optometrist; and
    - h. Two adjacent signature lines, under the left of which are the printed words "dispense as written", and

under the right, the printed words "substitution permissible".

34. A Any prescription may include additional information as the optometrist considers deems necessary or appropriate.
- B. An optometrist who dispenses or directs the dispensing of ophthalmic materials shall ensure that prescriptions are filled accurately and with quality workmanship.
- C. An optometrist shall be make his services available to verify that a his prescription written by the optometrist but filled by another provider of ophthalmic goods has been accurately filled. The optometrist may charge a fee for verification of the accuracy or quality of ophthalmic goods dispensed by another provider.

**R4-21-306. Low Vision Rehabilitation and Vision Therapy**

An optometrist may employ any objective or subjective means or methods other than surgery, to diagnose or treating with topical pharmaceutical agents any visual, muscular, neurological or anatomical anomaly of the eye. The optometrist may use any instrument or device to train the visual system or correct any abnormal condition of the eye, including the use of low vision rehabilitation and vision therapy.

**R4-21-306R4-21-307. Subpoenas**

The Board shall approve all All summons and subpoenas issued by the Secretary or the Executive Director of the Board in connection with Board investigations or disciplinary proceedings pursuant to Title 32, Chapter 21, shall be approved by the Board and issued by the Secretary of the Board or the Executive Director appointed by the Board.

**R4-21-307R4-21-308. Rehearing or Review of Administrative Decision review of administrative decision**

- A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Board who is aggrieved by a decision rendered in the case may file a written motion for rehearing of the decision with the Board not later than 30 ten days after service of the decision. The motion shall specify the particular grounds for the rehearing. For purposes of this subsection subsection a decision is shall be deemed to have been served when personally delivered or mailed by certified mail to a the party at the party's his last known residence or place or business.
- B. A party may amend A motion for rehearing under this Section may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 ten days after service of the such motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may permit provide for oral argument.
- C. The Board may grant a A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the Board, or its hearing officer, or the prevailing party, or in any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Board, or its hearing officer, or the prevailing party.
  3. Accident or surprise that which could not have been prevented by ordinary prudence;
  4. Material evidence, newly Newly discovered, material evidence that which could not with reasonable diligence could not have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;

**Notices of Supplemental Proposed Rulemaking**

6. Error in the admission or rejection of evidence or other errors of law occurring in the course of an ~~at the~~ administrative hearing;
7. That the decision is not justified by the evidence or is contrary to law.
- D. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons ~~set forth~~ in subsection (C). An order granting a rehearing shall specify with particularity the ~~ground or~~ grounds on which the rehearing is granted, and the rehearing shall cover only those matters ~~so specified~~.
- E. Not later than 30 ~~ten~~ days after the Board issues a decision is ~~rendered~~, the Board may on its own initiative review or order a rehearing of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the Board order granting ~~the such~~ rehearing shall specify the grounds therefor.
- F. When a motion for rehearing is based upon affidavits, a party making the motion shall serve the affidavits they shall be served with the motion. Within 10 days after service an opposing party may ~~within ten days after such service~~ serve opposing affidavits. The Board may extend the 10 day period, not to exceed 20 days, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or upon by written stipulation of the parties. The Board may permit reply ~~Reply affidavits may be permitted.~~
- G. ~~If, in a particular decision, the Board makes a specific finding in a decision that the immediate effectiveness of the decision is necessary for the preservation of the public peace, health, or safety and that a rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision may be issued as a final decision without opportunity for a rehearing. If a Board decision is issued as a final decision without an opportunity for rehearing, a party seeking any application for judicial review of the decision shall make application to the superior court be made within the time limits permitted for application for judicial review of the Board's final decision.~~
- H. The terms "contested case" and "party" have the same meaning as in A.R.S. Title 41, Chapter 6.

**ARTICLE 4. PUBLIC PARTICIPATION PROCEDURES**

**R4-21-401. Agency Record; Directory of Substantive Policy Statements**

The official rulemaking record and directory of substantive policy statements is located in the office of the Board and may be reviewed any week day, 8 a.m. until 5 p.m., except state holidays.

**R4-21-402. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business or Consumer Impact**

- A. A petition to adopt, amend, or repeal a rule or to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule, pursuant to A.R.S. § 41-1023, or to object to a rule in accordance with A.R.S. § 41-1056.01, shall be filed with the Board as prescribed in this Section. Each petition shall contain:
  1. The name and current address of the petitioner;
  2. For the adoption of a new rule, the specific language of the proposed rule;
  3. For the amendment of a current rule, the citation for the applicable Arizona Administrative Code number and rule title. The request shall include the specific language of the current rule, any language to be deleted shall be

- stricken through but legible, and any new language shall be underlined.
4. For the repeal of a current rule, the citation for the applicable A.A.C. number and title of the rule proposed for repeal;
5. The reasons a rule should be adopted, amended, or repealed, and if in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information, including:
  - a. Any statistical data or other justification, with clear reference to an attached exhibit;
  - b. An identification of what persons or segment of the public would be affected and how they would be affected; and
  - c. If the petitioner is a public agency, a summary or relevant issues raised in any public hearing, or as written comments offered by the public.
6. For a review of an existing Board practice or substantive policy statement alleged to constitute a rule, the reasons the existing Board practice or substantive policy statement constitutes a rule and the proposed action requested of the Board.
7. For an objection to a rule based upon the economic, small business, or consumer impact evidence that:
  - a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the rule; or
  - b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
8. The signature of the person submitting the petition.

**R4-21-403. Public Comments**

- A. On or before the close of record, a person may comment upon a rule proposed by the Board by submitting written comments on the proposed rule or upon any other matter noticed for public comment in the Arizona Administrative Register to the Board.
- B. The Board considers a written comment submitted on the date it is received by the Board, except if a comment is mailed, the date of receipt shall be the postmarked date.
- C. The Board shall consider all written comments that conform with A.R.S. § 41-1023.

**R4-21-404. Oral Proceedings**

- A. A person requesting oral proceedings, as prescribed in A.R.S. § 41-1023(C), shall:
  1. File the request with the Board;
  2. Include the name and current address of the person making the request; and
  3. Refer to the proposed rule and include, if known, the date and issue of the Arizona Administrative Register in which the notice was published.
- B. The Board shall record an oral proceeding either electronically or stenographically, and any cassette tapes, transcripts, registers, and all written comments received shall become part of the official record.
- C. The presiding officer shall utilize the following guidelines to conduct oral proceedings:
  1. Registration of attendees. Registration of attendees shall be voluntary.

Notices of Supplemental Proposed Rulemaking

2. Registration of persons intending to speak. Registration information shall include the registrant's name, representative capacity, if applicable, a notation of the registrant's position with regard to the proposed rule and the approximate length of time they wish to speak.
3. Opening of the record. The presiding officer shall open the proceeding by identifying the rules to be considered, the location, date, time, and purpose of the proceeding, and present the agenda.
4. A statement by Board representative. The Board representative shall explain the background and general content of the proposed rules.
5. A public oral comment period. The presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.
6. Closing remarks. The presiding officer shall announce the location where the written public comments are to be sent.

**R4-21-405. Petition for Delayed Effective Date**

- A. A person wanting to delay the effective date of a rule under A.R.S. § 41-1032, shall file a petition with the Board. The petition shall contain:

1. The name and current address of the person submitting the petition;
  2. Identification of the proposed rule;
  3. The need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted, and the reasons why the public interest will not be harmed by the later date; and
  4. The signature of the person submitting the petition.
- B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

**R4-21-406. Written Criticism of Rule**

- A. Any person may file a written criticism of an existing rule with the Board.
- B. The criticism shall clearly identify the rule and specify why the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise considered to be improper.
- C. The Board shall acknowledge receipt of any criticism within 15 days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.